

AMENDED IN SENATE JUNE 15, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 704

Introduced by Assembly Member Cooley

February 25, 2015

An act to amend ~~Section 12340.3 of~~, to amend, repeal, and add Section 12389 of, and to add ~~Sections 12340.12 and Section 12340.13~~ to, the Insurance Code, relating to escrow.

LEGISLATIVE COUNSEL'S DIGEST

AB 704, as amended, Cooley. Escrow services: authorization to transact business.

~~Existing law provides for the regulation of title insurers and underwritten title companies by the Insurance Commissioner. Existing law, the Escrow Law, defines escrow agents and regulates their activities. Existing law defines escrow as a transaction in which one person, for the purpose of effecting a sale or transfer to another, delivers a thing of value to a 3rd person to be held by that person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered.~~

~~This bill would define "escrow" as it relates to transactions regarding the sale, transfer, encumbrance, or lease of real or personal property, as the delivery of a thing of value to an insurer, underwritten title company, or controlled escrow company, to be held by that entity until the happening of a specified event or the performance of a prescribed condition, when that thing is then to be delivered to another specified person.~~

Existing law authorizes an underwritten title company to engage in the escrow business and to act as an escrow agent if the company satisfies specified requirements, including maintenance of specified records, and the deposit of a specified sum of money with the commissioner. Existing law specifies the conditions under which the commissioner may release or return those deposits to the company.

This bill would expand the requirements for a company to be authorized to conduct escrow services, to engage in the escrow business, and to act as an escrow agent. ~~This~~ *The* bill would authorize a company that is a stock corporation to conduct escrow services through a business location, as defined, if the company receives approval of its name from the commissioner, maintains a minimum net worth, obtains a license to transact its business from the commissioner, and furnishes audits to the commissioner, as specified. ~~This~~ *The* bill would require a company, on and after July 1, 2016, as a condition of engaging in the escrow business or acting as an escrow agent, to maintain a bond ~~in a specified amount based on its annual trust fund obligations.~~ *of \$50,000.* ~~The~~ bill would authorize a company to, with the approval of the commissioner, ~~make a cash deposit or~~ obtain an irrevocable letter of credit in lieu of that bond. ~~This~~ *The* bill would specify conditions for the issuance of that bond or letters of credit or use of that cash deposit. ~~This~~ *The* bill would require the commissioner to *promptly* release all escrow-related deposits made with the commissioner before July 1, 2016, under specified conditions, including the deposit of the bond, letter of credit, or cash deposit described above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. ~~Section 12340.3 of the Insurance Code is~~
- 2 ~~amended to read:~~
- 3 12340.3. ~~“Business of title insurance” includes:~~
- 4 (a) ~~Issuing or proposing to issue any title policy as insurer,~~
- 5 ~~guarantor, or indemnitor;~~
- 6 (b) ~~Transacting or proposing to transact any phase of title~~
- 7 ~~insurance, including solicitation, negotiation preliminary to~~
- 8 ~~execution, or execution of a title policy, insuring and transacting~~
- 9 ~~matters subsequent to the execution of a title policy and arising~~
- 10 ~~out of such policy, excluding reinsurance;~~

1 ~~(e) The performance by a title insurer, an underwritten title~~
2 ~~company or a controlled escrow company of any service in~~
3 ~~conjunction with the issuance or contemplated issuance of a title~~
4 ~~policy.~~

5 ~~(d) The handling of any escrow, settlement, or closing.~~

6 ~~(e) The doing of or proposing to do any business which is in~~
7 ~~substance the equivalent of any of the items listed in subdivisions~~
8 ~~(a) to (d), inclusive.~~

9 ~~(f) The issuance, by a title insurer, of a letter of indemnity. Any~~
10 ~~such letter of indemnity shall be limited to and issued solely for~~
11 ~~the purpose of indemnifying the commissioner on behalf of any~~
12 ~~member of the public who transacts an escrow with an underwritten~~
13 ~~title company, with whom the title insurer has an underwriting~~
14 ~~agreement. A title insurer may charge a reasonable fee in~~
15 ~~connection with the issuance of any such letter. No rate or form~~
16 ~~filing shall be required with respect to any such letter of indemnity.~~

17 ~~(g) The act of an insurer in furnishing in writing to a prospective~~
18 ~~purchaser of the insurer's title policy a statement which assures,~~
19 ~~and assumes the liability for, the proper performance of services~~
20 ~~necessary to the conduct of a real estate closing performed by an~~
21 ~~underwritten title company with whom the insurer maintains an~~
22 ~~underwriting agreement. A title insurer may charge a reasonable~~
23 ~~fee in connection with the furnishing of any such statement. No~~
24 ~~rate or form filing shall be required with respect to any such~~
25 ~~statement.~~

26 ~~SEC. 2.—Section 12340.12 is added to the Insurance Code, to~~
27 ~~read:~~

28 ~~12340.12. "Escrow" means any transaction in which a person,~~
29 ~~for the purposes of effecting the sale, transfer, encumbrance, or~~
30 ~~lease of real or personal property, regardless of the location of the~~
31 ~~real or personal property, delivers a written instrument, money,~~
32 ~~evidence of title to real or personal property, or other thing of value~~
33 ~~to an insurer, underwritten title company, or controlled escrow~~
34 ~~company, to be held by that insurer, underwritten title company,~~
35 ~~or controlled escrow company until the happening of a specified~~
36 ~~event or the performance of a prescribed condition, when it is then~~
37 ~~to be delivered by that insurer, underwritten title company, or~~
38 ~~controlled escrow company to a grantee, grantor, promisee,~~
39 ~~promisor, obligee, obligor, or any agent or employee of any of the~~
40 ~~latter.~~

1 ~~SEC. 3.~~

2 *SECTION 1.* Section 12340.13 is added to the Insurance Code,
3 to read:

4 12340.13. “Business location” means a facility or other place
5 of business *in this state* where an underwritten title company or
6 controlled escrow company engages in the business of ~~receiving~~
7 ~~an escrow for deposit or delivery.~~ *conducting escrow services.*

8 ~~SEC. 4.~~

9 *SEC. 2.* Section 12389 of the Insurance Code is amended to
10 read:

11 12389. (a) An underwritten title company as defined in Section
12 12340.5, which shall be a stock corporation, ~~may~~ *may, subject to*
13 *subdivision (b), (1)* engage in the business of preparing title
14 searches, title reports, title examinations, or certificates or abstracts
15 of title, upon the basis of which a title insurer writes title policies,
16 and ~~conducting~~ *(2) conduct* escrow services ~~through~~ *at* business
17 locations, as defined in Section 12340.13, in counties in which the
18 underwritten title company is licensed to ~~transact business,~~
19 ~~provided that:~~ *conduct escrow services regardless of the location*
20 *of the real or personal property involved in the transaction.*

21 ~~(1)~~

22 *(b) (1)* Only domestic corporations may be licensed under this
23 section and no underwritten title company, as defined in Section
24 12340.5, shall become licensed under this section, or change the
25 name under which it is licensed or operates, unless it has first
26 complied with Section 881.

27 *(2) (A)* Depending upon the county or counties in which the
28 company is licensed to transact business, it shall maintain required
29 minimum net worth as follows:

30		
31	Aggregate number of documents	
32	recorded and documents filed in the	
33	offices of the county recorders in the	
34	preceding calendar year in all counties	
35	where the company is licensed to transact	
36	business.	
37		Amount of required
38	Number of documents	minimum net worth
39	Less than 50,000	\$ 75,000
40	50,000 to 100,000	120,000

1 Aggregate number of documents
 2 recorded and documents filed in the
 3 offices of the county recorders in the
 4 preceding calendar year in all counties
 5 where the company is licensed to transact
 6 business.

7	Amount of required
8 Number of documents	minimum net worth
9 100,000 to 500,000	200,000
10 500,000 to 1,000,000	300,000
11 1,000,000 or more	400,000

12
 13 (B) "Net worth" is defined as the excess of assets over all
 14 liabilities and required reserves. It may carry as an asset the actual
 15 cost of its title plant, provided the value ascribed to that asset shall
 16 not exceed the aggregate value of all other assets.

17 (C) If a title plant of an underwritten title company is not being
 18 currently maintained, the asset value of the plant shall not exceed
 19 its asset value as determined in the preceding paragraph as of the
 20 date to which that plant is currently maintained, less one-tenth
 21 thereof for each succeeding year or part of the succeeding year
 22 that the plant is not being currently maintained. For the purposes
 23 of this section, a title plant shall be deemed currently maintained
 24 so long as it is used in the normal conduct of the business of title
 25 insurance, and (i) the owner of the plant continues regularly to
 26 obtain and index title record data to the plant or to a continuation
 27 thereof in a format other than that previously used, including, but
 28 not limited to, computerization of the data, or (ii) the owner of the
 29 plant is a participant, in an arrangement for joint use of a title plant
 30 system regularly maintained in any format, provided the owner is
 31 contractually entitled to receive a copy of the title record data
 32 contained in the jointly used title plant system during the period
 33 of the owner's participation therein, either periodically or upon
 34 termination of that participation, at a cost not to exceed the actual
 35 cost of duplication of the title record data.

36 (D) An underwritten title company at all times shall maintain
 37 current assets of at least ten thousand dollars (\$10,000) in excess
 38 of its current liabilities, as current assets and liabilities may be
 39 defined pursuant to regulations made by the commissioner. In
 40 making the regulations, the commissioner shall be guided by

1 generally accepted accounting principles followed by certified
2 public accountants in this state.

3 (3) (A) An underwritten title company shall obtain from the
4 commissioner a license to transact its business. The license shall
5 not be granted until the applicant conforms to the requirements of
6 this section and all other provisions of this code specifically
7 applicable to *the* applicant. After issuance the holder shall continue
8 to comply with the requirements as to its business set forth in this
9 code, in the applicable rules and regulations of the commissioner
10 and in the laws of this state.

11 (B) An underwritten title company that possesses, or is required
12 to possess, a license pursuant to this section is subject as if an
13 insurer to the provisions of Article 8 (commencing with Section
14 820) of Chapter 1 of Part 2 of Division 1 of this code and is deemed
15 to be subject to authorization by the Insurance Commissioner
16 within the meaning of subdivision (e) of Section 25100 of the
17 Corporations Code.

18 (C) The license may be obtained by filing an application on a
19 form prescribed by the commissioner accompanied by a filing fee
20 of three hundred fifty-four dollars (\$354). The license when issued
21 shall be for an indefinite term and shall expire with the termination
22 of the existence of the holder, subject to the annual renewal fee
23 imposed under Sections 12415 and 12416.

24 (D) An underwritten title company seeking to extend its license
25 to an additional county shall pay a two-hundred-seven-dollar (\$207)
26 fee for each additional county, and shall furnish to the
27 commissioner evidence, at least sufficient to meet the minimum
28 net worth requirements of paragraph (2), of its financial ability to
29 expand its business operation to include the additional county or
30 counties.

31 (4) (A) An underwritten title company shall furnish an audit to
32 the commissioner on the forms provided by the commissioner
33 annually, either on a calendar year basis on or before March 31
34 or, if approved in writing by the commissioner in respect to any
35 individual company, on a fiscal year basis on or before 90 days
36 after the end of the fiscal year. The time for furnishing any audit
37 required by this paragraph may be extended, for good cause shown,
38 on written approval of the commissioner for a period, not to exceed
39 60 days. Failure to submit an audit on time, or within the extended
40 time that the commissioner may grant, shall be grounds for an

1 order by the commissioner to accept no new business pursuant to
2 subdivision (d). The audits shall be private, except that a synopsis
3 of the balance sheet on a form prescribed by the commissioner
4 may be made available to the public.

5 (B) The audits shall be made in accordance with generally
6 accepted auditing standards by an independent certified public
7 accountant or independent licensed public accountant whose
8 certification or license is in good standing at the time of the
9 preparation. The fee for filing the audit shall be three hundred
10 thirteen dollars (\$313).

11 (C) The commissioner may refuse to accept an audit or order a
12 new audit for any of the following reasons:

13 (i) An adverse result in any proceeding before the California
14 Board of Accountancy affecting the auditor's license.

15 (ii) The auditor has an affiliation with the underwritten title
16 company, or any of its officers or directors, that would prevent his
17 or her reports on the company from being reasonably objective.

18 (iii) The auditor has suffered conviction of a misdemeanor or
19 felony based on his or her activities as an accountant.

20 (iv) A judgment adverse to the auditor in any civil action finding
21 him or her guilty of fraud, deceit, or misrepresentation in the
22 practice of his or her profession.

23 (D) A company that fails to file any audit or other report on or
24 before the date it is due shall pay to the commissioner a penalty
25 fee of one hundred eighteen dollars (\$118) and on failure to pay
26 that or another fee or file the audit required by this section shall
27 forfeit the privilege of accepting new business until the delinquency
28 is corrected.

29 ~~(b)~~

30 (c) An underwritten title company may engage in the escrow
31 business and act as escrow agent provided that:

32 (1) The company maintains a record of *all* receipts and
33 disbursements of escrow funds.

34 (2) (A) The company deposits seven thousand five hundred
35 dollars (\$7,500) for each county in which it transacts business in
36 some form permitted by Section 12351 with the commissioner
37 who shall immediately make a special deposit of that amount in
38 the State Treasury and that deposit shall be subject to Sections
39 12353, 12356, 12357, and 12358 and, as long as there are no claims
40 against the deposit, all interest and dividends thereon shall be paid

1 to the depositor. The deposit shall be for the security and protection
2 of persons having lawful claims against the depositor growing out
3 of escrow transactions with it. The deposit shall be maintained
4 until four years after all escrows handled by the depositor have
5 been closed.

6 (B) The commissioner may release the deposits prior to the
7 passage of the four-year period upon presentation of evidence
8 satisfactory to the commissioner of either a statutory merger of
9 the depositor into a licensee or certificate holder subject to the
10 jurisdiction of the commissioner, or a valid assumption agreement
11 under which all liability of the depositor stemming from escrow
12 transactions handled by it is assumed by a licensee or certificate
13 holder subject to the jurisdiction of the commissioner.

14 (C) With the foregoing exceptions, the deposit shall be returned
15 to the depositor or lawful successor in interest following the
16 four-year period, upon presentation of evidence satisfactory to the
17 commissioner that there are no claims against the deposit stemming
18 from escrow transactions handled by the depositor. If the
19 commissioner has evidence of one or more claims against the
20 depositor, and the depositor is not in conservatorship or liquidation,
21 the commissioner may interplead the deposit by special
22 endorsement to a court of competent jurisdiction for distribution
23 on the basis that claims against the depositor stemming from
24 escrow transactions handled by it have priority in the distribution
25 over other claims against the depositor.

26 (e)

27 (d) The commissioner shall, whenever it appears necessary,
28 examine the business and affairs of a company licensed under this
29 section. The examination shall be at the expense of the company.

30 (f)

31 (e) (1) If the commissioner determines, after notice and hearing,
32 that a company licensed under this section has willfully failed to
33 comply with a provision of this section, the commissioner shall
34 make his or her order prohibiting the company from conducting
35 its business for a period of not more than one year.

36 (2) A company violating the commissioner's order is subject to
37 seizure under Article 14 (commencing with Section 1010) of
38 Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and
39 may have the license revoked by the commissioner. Any person

1 aiding and abetting any company in a violation of the
2 commissioner’s order is guilty of a misdemeanor.

3 (e)

4 (f) The purpose of this section is to maintain the solvency of
5 the companies subject to this section and to protect the public by
6 preventing fraud and requiring fair dealing. In order to carry out
7 these purposes, the commissioner may make reasonable rules and
8 regulations to govern the conduct of its business of companies
9 subject to this section. The rules and regulations shall be adopted,
10 amended, or repealed in accordance with the procedure provided
11 in Chapter 3.5 (commencing with Section 11340) of Part 1 of
12 Division 3 of Title 2 of the Government Code.

13 (f)

14 (g) The name under which each underwritten title company is
15 licensed shall at all times be an approved name. The fee for filing
16 an application for a change of name shall be one hundred eighteen
17 dollars (\$118). Each such company shall be subject to the
18 provisions of Article 14 (commencing with Section 1010) and
19 Article 14.5 (commencing with Section 1065.1) of Chapter 1 of
20 Part 2 of Division 1.

21 (g)

22 (h) This section is repealed as of July 1, 2016.

23 ~~SEC. 5.~~

24 SEC. 3. Section 12389 is added to the Insurance Code, to read:

25 12389. (a) On and after July 1, 2016, an underwritten title
26 company as defined in Section 12340.5 that is a stock corporation
27 ~~may may~~, *subject to subdivision (b), (1) engage in the business of*
28 *preparing title searches, title reports, title examinations, or*
29 *certificates or abstracts of title, upon the basis of which a title*
30 *insurer writes title policies, and—conducting (2) conduct escrow*
31 *services through business locations, as defined in Section 12340.13,*
32 *in counties in which the underwritten title company is licensed to*
33 ~~transact business, provided that:~~ *conduct escrow services regardless*
34 *of the location of the real or personal property involved in the*
35 *transaction.*

36 (h)

37 (b) (1) Only a domestic corporation may be licensed under this
38 section and no underwritten title company, as defined in Section
39 12340.5, may become licensed under this section, or change the

1 name under which it is licensed or operates, unless it has first
2 complied with Section 881.

3 (2) (A) Depending upon the county or counties in which the
4 company is licensed to transact business, it shall maintain required
5 minimum net worth as follows:

6
7 Aggregate number of documents
8 recorded and documents filed in the
9 offices of the county recorders in the
10 preceding calendar year in all counties
11 where the company is licensed to transact
12 business.

13	Amount of required
14 Number of documents	minimum net worth
15 Less than 50,000	\$ 75,000
16 50,000 to 100,000	120,000
17 100,000 to 500,000	200,000
18 500,000 to 1,000,000	300,000
19 1,000,000 or more	400,000

20
21 (B) “Net worth” for the purposes of this section is defined as
22 the excess of assets over all liabilities and required reserves. The
23 company may carry as an asset the actual cost of its title plant,
24 provided the value ascribed to that asset shall not exceed the
25 aggregate value of all other assets.

26 (C) If a title plant of an underwritten title company is not
27 currently maintained, the asset value of the plant shall not exceed
28 its asset value as determined in the preceding paragraph as of the
29 date to which that plant is currently maintained, less one-tenth
30 thereof for each succeeding year or part of the succeeding year
31 that the plant is not being currently maintained. For the purposes
32 of this section, a title plant shall be deemed currently maintained
33 so long as it is used in the normal conduct of the business of title
34 insurance, and (i) the owner of the plant continues regularly to
35 obtain and index title record data to the plant or to a continuation
36 thereof in a format other than that previously used, including, but
37 not limited to, computerization of the data, or (ii) the owner of the
38 plant is a participant, in an arrangement for joint use of a title plant
39 system regularly maintained in any format, provided the owner is
40 contractually entitled to receive a copy of the title record data

1 contained in the jointly used title plant system during the period
2 of the owner's participation therein, either periodically or upon
3 termination of that participation, at a cost not to exceed the actual
4 cost of duplication of the title record data.

5 (D) An underwritten title company shall at all times maintain
6 current assets of at least ten thousand dollars (\$10,000) in excess
7 of its current liabilities, as current assets and liabilities may be
8 defined pursuant to regulations made by the commissioner. In
9 making the regulations, the commissioner shall be guided by
10 generally accepted accounting principles followed by certified
11 public accountants in this state.

12 (3) (A) An underwritten title company shall obtain from the
13 commissioner a license to transact its business. The license shall
14 not be granted until the applicant conforms to the requirements of
15 this section and all other provisions of this code specifically
16 applicable to the applicant. After issuance the holder of the license
17 shall continue to comply with the requirements as to its business
18 set forth in this code, in the applicable rules and regulations of the
19 commissioner, and in the laws of this state.

20 (B) An underwritten title company that possesses, or is required
21 to possess, a license pursuant to this section shall be subject as if
22 an insurer to the provisions of Article 8 (commencing with Section
23 820) of Chapter 1 of Part 2 of Division 1 of this code and is deemed
24 to be subject to authorization by the Insurance Commissioner
25 within the meaning of subdivision (e) of Section 25100 of the
26 Corporations Code.

27 (C) The license may be obtained by filing an application on a
28 form prescribed by the commissioner accompanied by a filing fee
29 of three hundred fifty-four dollars (\$354). The license when issued
30 shall be for an indefinite term and shall expire with the termination
31 of the existence of the holder, subject to the annual renewal fee
32 imposed under Sections 12415 and 12416.

33 (D) An underwritten title company seeking to extend its license
34 to an additional county shall pay a two-hundred-seven-dollar (\$207)
35 fee for each additional county, and shall furnish to the
36 commissioner evidence, at least sufficient to meet the minimum
37 net worth requirements of paragraph (2), of its financial ability to
38 expand its business operation to include the additional county or
39 counties.

1 (4) (A) An underwritten title company shall furnish an audit to
2 the commissioner on the forms provided by the commissioner
3 annually, either on a calendar year basis on or before March 31
4 or, if approved in writing by the commissioner in respect to any
5 individual company, on a fiscal year basis on or before 90 days
6 after the end of the fiscal year. The time for furnishing any audit
7 required by this paragraph may be extended, for good cause shown,
8 on written approval of the commissioner for a period, not to exceed
9 60 days. Failure to submit an audit on time, or within the extended
10 time that the commissioner may grant, is grounds for an order by
11 the commissioner to accept no new business pursuant to
12 subdivision (d). The audits shall be private, except that a synopsis
13 of the balance sheet on a form prescribed by the commissioner
14 may be made available to the public.

15 (B) The audits shall be made in accordance with generally
16 accepted auditing standards by an independent certified public
17 accountant or independent licensed public accountant whose
18 certification or license is in good standing at the time of the
19 preparation. The fee for filing the audit shall be three hundred
20 thirteen dollars (\$313).

21 (C) The commissioner may refuse to accept an audit or order a
22 new audit for any of the following reasons:

23 (i) An adverse result in any proceeding before the California
24 Board of Accountancy affecting the auditor's license.

25 (ii) The auditor has an affiliation with the underwritten title
26 company or any of its officers or directors that would prevent his
27 or her reports on the company from being reasonably objective.

28 (iii) The auditor has been convicted of a misdemeanor or felony
29 based on his or her activities as an accountant.

30 (iv) A judgment adverse to the auditor in any civil action finding
31 him or her guilty of fraud, deceit, or misrepresentation in the
32 practice of his or her profession.

33 (D) A company that fails to file an audit or other report on or
34 before the date it is due shall pay to the commissioner a penalty
35 fee of one hundred eighteen dollars (\$118) and on failure to pay
36 that or another fee or file the audit required by this section shall
37 forfeit the privilege of accepting new business until the delinquency
38 is corrected.

39 (b)

1 (c) An underwritten title company may engage in the escrow
2 business and act as escrow agent, provided that:

3 (1) It maintains a record of all receipts and disbursements of
4 escrow funds.

5 (2) (A) ~~Except as provided in subdivision (c), the~~*The* company
6 shall maintain a bond ~~satisfactory to the commissioner in the~~
7 ~~amount of one of the following:~~ *of fifty thousand dollars (\$50,000).*

8 (i) ~~Twenty-five thousand dollars (\$25,000) if 150 percent of the~~
9 ~~previous year's average annual trust fund obligations, as calculated~~
10 ~~in subparagraph (D), does not exceed two hundred fifty thousand~~
11 ~~dollars (\$250,000).~~

12 (ii) ~~Thirty-five thousand dollars (\$35,000) if 150 percent of the~~
13 ~~previous year's average annual trust fund obligations, as calculated~~
14 ~~in subparagraph (D), exceeds two hundred fifty thousand dollars~~
15 ~~(\$250,000), but does not exceed five hundred thousand dollars~~
16 ~~(\$500,000).~~

17 (iii) ~~Fifty thousand dollars (\$50,000) if 150 percent of the~~
18 ~~previous year's average annual trust fund obligations, as calculated~~
19 ~~in subparagraph (D), exceeds five hundred thousand dollars~~
20 ~~(\$500,000).~~

21 (B) A deposit given instead of the bond required by this section
22 shall not be deemed an asset of the applicant or licensee.

23 (C)

24 (B) An applicant or licensee may ~~make a cash deposit or obtain~~
25 ~~obtain~~ an irrevocable letter of credit approved by the commissioner
26 ~~in lieu lieu, and in the amount, of the bond. The bond, cash deposit,~~
27 ~~or bond or~~ letter of credit, as applicable, shall run to the state for
28 the use of the state, and for any person who has cause against the
29 obligor of the bond or the applicant of a letter of credit, under the
30 ~~provision provisions of this division. chapter.~~

31 (D) ~~Calculations of trust fund obligations shall be based on the~~
32 ~~previous calendar year's average of the monthly trust fund~~
33 ~~liabilities or credit balances occurring on the last day of each~~
34 ~~calendar month.~~

35 (3) (A) ~~The issuance of a bond or letter of credit of an bond~~
36 ~~provided by a surety insurer naming the~~ underwritten title
37 ~~company, and company as principal obligor or the use of a cash~~
38 ~~deposit letter of credit of an underwritten title company, issuing~~
39 ~~bank~~ shall be subject to the following conditions:

1 (i) The licensee shall faithfully conform to and abide by the
2 provisions of this ~~division~~ *chapter* and all of the rules made by the
3 commissioner under this ~~division~~. *chapter concerning the conduct*
4 *of escrow services.*

5 (ii) The licensee will honestly and faithfully apply all funds
6 received, *and will faithfully and honestly perform all obligations*
7 *and undertakings under this division, and will pay to the state or*
8 *to the person under the provisions of this division, including the*
9 *costs in any conservatorship, or liquidation, whether by the*
10 *commissioner or by a receiver. chapter, concerning the conduct*
11 *of escrow services.*

12 (B) In determining the liability of the principal and the sureties
13 under the bond, ~~the applicant and issuing bank of a letter of credit,~~
14 ~~or the use of a cash deposit, escrow money held in trust and any~~
15 ~~money recovered to restore any deficiency in the trust shall not be~~
16 ~~considered as an asset of the liquidation subject to the assessment~~
17 ~~for the cost of the liquidation.~~

18 (C) The surety under the bond, or the issuing bank of a letter of
19 credit, may pay the full amount of its liability thereunder to the
20 commissioner ~~or a conservator~~ *as conservator, liquidator, receiver,*
21 *or anyone* appointed by the commissioner *as a conservator,*
22 *liquidator, or receiver* in lieu of payment to the state or persons
23 having a cause of action against the principal of a bond or applicant
24 under a letter of credit, and upon such payment the surety ~~under~~
25 ~~a~~ *on the* bond, or the issuing bank under a letter of credit, ~~is credit~~
26 ~~shall be completely released~~ *released, discharged, and exonerated*
27 *from further liability under the bond or letter of credit, as*
28 *applicable. The conservator, liquidator, or receiver may use the*
29 *proceeds of the bond, or letter of credit, for any purposes, including*
30 *the funding of the costs of conservatorship, receivership, or*
31 *liquidation.*

32 (D) *If there is no reasonable or adequate admitted market for*
33 *surety bonds as required by this section, the commissioner may*
34 *act pursuant to Section 1763.1 or, under extraordinary*
35 *circumstances and for good cause shown, permit a cash deposit*
36 *in lieu thereof, and in the amount of the bond required by this*
37 *section. In that case, the commissioner may fashion the deposit*
38 *requirements as appropriate to the circumstances and cause.*

39 (4) On and after July 1, 2016, the commissioner shall promptly
40 ~~release all individual~~ *to the depositor, upon application, all*

1 escrow-related deposits previously made pursuant to ~~paragraph~~
2 ~~(2) of subdivision (b) of Section 12389, as amended by Section 4~~
3 ~~of the act that added this section, paragraph (2) of subdivision (c)~~
4 ~~of former Section 12389~~ if any of the following occurs:

5 (A) The underwritten title company has ~~deposited with~~ *provided*
6 ~~to the commissioner bond coverage acceptable to the~~
7 ~~commissioner, or an approved irrevocable letter of credit or a cash~~
8 ~~deposit in lieu of the letter of credit as set forth in subdivision (b).~~
9 *this subdivision.*

10 (B) ~~Presentation~~ *Upon presentation* of evidence satisfactory to
11 the commissioner of either a statutory merger of the underwritten
12 title company depositor into a licensee or certificate holder subject
13 to the jurisdiction of the commissioner, or a valid assumption
14 agreement under which all liability of the depositor stemming from
15 escrow transactions handled by it is assumed by a licensee or
16 certificate holder subject to the jurisdiction of the commissioner.

17 (5) ~~With the foregoing exceptions,~~ *Otherwise* the deposit shall
18 be *promptly* returned to the depositor, its duly appointed trustee
19 in bankruptcy or lawful successor in interest *upon application for*
20 *release* following the four-year period specified in paragraph (2)
21 ~~of subdivision (b)~~, as that paragraph read on June 30, 2016, unless
22 the commissioner has received claims against the deposit stemming
23 from escrow transactions handled by the depositor. If the
24 commissioner has received one or more claims against the
25 depositor, and the depositor is not in ~~conservatorship~~
26 *conservatorship, bankruptcy*, or liquidation, the commissioner
27 may interplead the deposit by special endorsement to a court of
28 competent jurisdiction for distribution on the basis that claims
29 against the depositor stemming from escrow transactions handled
30 by the depositor have priority in the distribution over other claims
31 against the depositor.

32 (e) ~~A new applicant for an underwritten title company license~~
33 ~~shall deposit with the commissioner a bond satisfactory to the~~
34 ~~commissioner in the amount of at least twenty-five thousand dollars~~
35 ~~(\$25,000) or a cash deposit in said amount. After 12 months of~~
36 ~~operation as a new underwritten title company, the applicant shall~~
37 ~~comply with the requirements set forth in paragraph (3) of~~
38 ~~subdivision (b).~~

1 (d) The commissioner shall, whenever it appears necessary,
2 examine the business and affairs of a company licensed under this
3 section. The examination shall be at the expense of the company.

4 (e) (1) At any time that the commissioner determines, after
5 notice and hearing, that a company licensed under this section has
6 willfully failed to comply with a provision of this section, the
7 commissioner shall make his or her order prohibiting the company
8 from conducting its business for a period of not more than one
9 year.

10 (2) A company that violates the commissioner’s order is subject
11 to seizure under Article 14 (commencing with Section 1010) of
12 Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and
13 may have its license revoked by the commissioner. Any person
14 aiding and abetting any company in a violation of the
15 commissioner’s order is guilty of a misdemeanor.

16 (f) The purpose of this section is to maintain the solvency of
17 the companies subject to this section and to protect the public by
18 preventing fraud and requiring fair dealing. In order to carry out
19 these purposes, the commissioner may make reasonable rules and
20 regulations to govern the conduct of its business of companies
21 subject to this section. The rules and regulations shall be adopted,
22 amended, or repealed in accordance with the procedures provided
23 in Chapter 3.5 (commencing with Section 11340) of Part 1 of
24 Division 3 of Title 2 of the Government Code.

25 (g) The name under which each underwritten title company is
26 licensed shall at all times be an approved name. The fee for filing
27 an application for a change of name shall be one hundred eighteen
28 dollars (\$118). Each company shall be subject to the provisions
29 of Article 14 (commencing with Section 1010) and Article 14.5
30 (commencing with Section 1065.1) of Chapter 1 of Part 2 of
31 Division 1.

32 (h) This section does not prohibit an underwritten title company
33 from engaging in escrow, settlement, or closing activities on
34 properties located outside this state if those activities do not violate
35 the laws of that other state or country.

36 (i) This section is operative on July 1, 2016.

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